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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

## LOK SABHA

The following Bills were introduced in Lok Sabha on the 3rd June, 1971:—

BILL No. 70 OF 1971

*A Bill to validate appointments of certain officers under the Bengal Finance (Sales Tax) Act, 1941, as in force in the Union territory of Delhi and to validate proceedings taken by such officers under that Act and the Central Sales Tax Act, 1956.*

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

1. This Act may be called the Bengal Finance (Sales Tax) (Delhi Validation of Appointments and Proceedings) Act, 1971. Short title.

2. In this Act,— Definitions.

(*a*) "Administrator" means the administrator of the Union territory of Delhi appointed by the President under article 239 of the Constitution;

(*b*) "appointment" means appointment as—

(*a*) Commissioner of Sales Tax; or

(*b*) Additional Commissioner of Sales Tax; or

(c) Deputy Commissioner of Sales Tax; or

(d) Assistant Commissioner of Sales Tax; or

(e) Sales Tax Officer; or

(f) Assistant Sales Tax Officer; or

(g) Inspector.

Validation of certain appointments, assessments, etc.

3. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority,—

(a) no appointment of any person made or purporting to have been made under or for the purposes of the Bengal Finance (Sales Tax) Act, 1941, as in force in the Union territory of Delhi (hereinafter referred to as the principal Act) before the commencement of this Act shall be deemed to be illegal or invalid or ever to have been illegal or invalid merely on the ground that such appointment was not made in accordance with the provisions of section 3 of the principal Act or on the ground that such appointment was not made under that section or on both those grounds; and Bengal Act VI of 1941.

(b) no assessment, re-assessment, levy or collection of any tax made or purporting to have been made under the principal Act or under the Central Sales Tax Act, 1956, as the case may be, before the commencement of this Act and no jurisdiction exercised, no order made and no other act or proceeding or thing done or taken by, or before, a person referred to in clause (a) in relation to such assessment, re-assessment, levy or collection shall be deemed to be illegal or invalid or ever to have been illegal or invalid merely on the ground that such jurisdiction was exercised or such order had been made or such other act or proceeding or thing had been done or taken by, or before, a person whose appointment was not made in accordance with or under the provisions of section 3 of the principal Act, and accordingly— 74 of 1956.

(i) all appointments made or purporting to have been made under or for the purposes of the principal Act before the commencement of this Act shall, for all purposes, be deemed to be, and to have been, made in accordance with law;

(ii) the jurisdiction exercised, orders made and all other acts, proceedings or things done or taken by the Administrator or by a person whose appointment had been made as aforesaid or by any other officer of Government or by any tribunal or other authority in connection with the said appointments or in connection with the assessment, re-assessment, levy or collection of tax under the principal Act or under the Central Sales Tax Act, 1956, as the case may be, shall, for all purposes, be deemed to be and to have been exercised, made, done or taken in accordance with law; and 74 of 1956.

(iii) no suit or other proceedings shall be maintained or continued in any court or before any tribunal or other authority whatsoever on the ground that any such appointment was illegal

or invalid or any such jurisdiction, order or other act, proceeding or thing was not exercised, made, done or taken in accordance with law.

Repeal and saving

4. (*1*) The Bengal Finance (Sales Tax) (Delhi Validation of Appointments and Proceedings) Ordinance, 1971, is hereby repealed.

(*2*) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act, as if this Act had commenced on the 18th day of May, 1971.

## STATEMENT OF OBJECTS AND REASONS

Section 3 of the Bengal Finance (Sales Tax) Act, 1941 as in force in the Union territory of Delhi, requires that for carrying out the purposes of the Act, the Lt. Governor shall appoint a Commissioner of Sales Tax, together with such other persons to assist him, as the Lt. Governor thinks fit. However, several officers for assisting the Commissioner of Sales Tax were appointed not under the said section 3 but under the Service Rules. Though these officers were subsequently appointed with retrospective effect by the Lt. Governor under section 3 their appointments are not in accordance with that section as it does not permit any appointment with retrospective effect.

2. In a writ petition filed before the Delhi High Court, the Delhi Woollen Mills challenged one such appointment together with the action taken by the officer so appointed. The petition is now pending before the High Court. The Bengal Finance (Sales Tax) (Delhi Validation of Appointments and Proceedings) Ordinance, 1971, was therefore promulgated by the President on the 18th May, 1971, to validate the appointments of the affected officers and the proceedings taken by such officers under the aforesaid Bengal Act and the Central Sales Tax Act, 1956.

3. This Bill seeks to replace the said Ordinance by an Act of Parliament.

NEW DELHI;

*The 24th May*, 1971. K. R. GANESH.

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## PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 26/4/71-ST, dated the 27th May, 1971 from Shri K. R. Ganesh, Minister of State in the Ministry of Finance (Vitta Mantralaya men Rajya Mantri) to the Secretary, Lok Sabha.]

The President, having been apprised of the subject matter of the Bengal Finance (Sales Tax) (Delhi Validation of Appointments and Proceedings) Bill, 1971, has been pleased to recommend, in pursuance of clause (1) of article 117 and clause (1) of article 274 of the Constitution of India, the introduction of the Bill in the Lok Sabha.

BILL No. 71 OF 1971

*A Bill to proide for detention in certain cases for the purpose of maintenance of internal security and matters connected therewith.*

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

Short title and extent.

1. (1) This Act may be called the Maintenance of Internal Security Act, 1971.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

Definitions.

2. In this Act, unless the context otherwise requires,-

(a) "appropriate Government" means, as respects a detention order made by the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to a State Government or as respects a person detained under such order, the State Government;

(b) "detention order" means an order made under section 3;

(c) "foreigner" has the same meaning as in the Foreigners Act, 1946;

31 of 1946.

(d) "State Government", in relation to a Union territory, means the administrator thereof.

Power to make orders detaining certain persons.

3. (1) The Central Government or the State Government may,—

(*a*) if satisfied with respect to any person (including a foreigner) that with a view to preventing him from acting in any manner prejudicial to—

(*i*) the defence of India, the relations of India with foreign powers, or the security of India, or

(*ii*) the security of the State or the maintenance of public order, or

(*iii*) the maintenance of supplies and services essential to the community, or

(*b*) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

(2) Any of the following officers, namely:—

(*a*) district magistrates,

(*b*) additional district magistrates specially empowered in this behalf by the State Government,

(c) the Commissioner of Police for Bombay, Calcutta, Madras Hyderabad,

may, if satisfied as provided in sub-clauses (*ii*) and (*iii*) of clause (*a*) of sub-section (1) exercise the power conferred by the said sub-section.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the authority making the order after five days but not later than fifteen days from the date of detention, this sub-section shall apply subject to the modification that for the words "twelve days", the words "twenty-two days" shall be substituted.

(4) When any order is made or approved by the State Government under this section, the State Government shall, as soon as may be, report the fact to the Central Government together with the grounds on which

the order has been made and such other particulars as in the opinion of the State Government have a bearing on the necessity for the order.

Execution of detention orders.

4. A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1898.

5 of 1898.

Power to regulate place and conditions of detention.

5. Every person in respect of whom a detention order has been made shall be liable—

(*a*) to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and

(*b*) to be removed from one place of detention to another place of detention, whether within the same State or in another State, by order of the appropriate Government:

Provided that no order shall be made by a State Government under clause (*b*) for the removal of a person from one State to another State except with the consent of the Government of that other State.

Detention orders not to be invalid or inoperative on certain grounds.

6. No detention order shall be invalid or inoperative merely by reason—

(*a*) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or officer making the order, or

(*b*) that the place of detention of such person is outside the said limits.

Powers in relation to absconding persons.

7. (*1*) If the Central Government or the State Government or an officer specified in sub-section (*2*) of section 3, as the case may be, has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government or officer may—

(*a*) make a report in writing of the fact to a Presidency Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 87, 88 and 89 of the Code of Criminal Procedure, 1898, shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

5 of 1898.

(*b*) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person falls to comply with such direction he shall, unless he proves that it was not

possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, every offence under clause (b) of sub-section (1) shall be cognizable. 5 of 1898.

Grounds of order of detention to be disclosed to persons affected by the order.

8. (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

Constitution of Advisory Boards.

9. (1) The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.

(2) Every such Board shall consist of three persons who are, or have been, or are qualified to be appointed as, Judges of a High Court, and such persons shall be appointed by the Central Government or the State Government, as the case may be.

(3) The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, a Judge of a High Court to be its Chairman, and in the case of a Union territory the appointment to the Advisory Board, of any person who is a Judge of the High Court of a State shall be with the previous approval of the State Government concerned.

Reference to Advisory Boards.

10. Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within thirty days from the date of detention under the order, place before the Advisory Board constituted by it under section 9 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report by such officer under sub-section (3) of section 3.

Procedure of Advisory Boards.

11. (1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within ten weeks from the date of detention.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

Action upon the report of Advisory Board.

12. (1) In any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

Maximum period of detention.

13. The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12 shall be twelve months from the date of detention:

Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.

Revocation of detention orders.

14. (1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897, a detention order may, at any time, be revoked or modified— 10 of 1897.

(a) notwithstanding that the order has been made by an officer mentioned in sub-section (2) of section 3, by the State Government to which that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by a State Government, by the Central Government.

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made.

Temporary release of persons detained.

15. (1) The appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(2) In directing the release of any person under sub-section (1), the appropriate Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.

(3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(5) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

Protection of action taken in good faith.

16. No suit or other legal proceeding shall lie against the Central Government or a State Government, and no suit, prosecution or other legal proceeding shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act.

Duration of detention in certain cases of foreigners.

17. (1) Notwithstanding anything contained in this Act, any foreigner in respect of whom an order of detention has been made under this Act may be detained without obtaining the opinion of the Advisory Board for a period longer than three months, but not exceeding two years from the date of his detention, in any of the following classes of cases or under any of the following circumstances, namely:—

(a) where such foreigner enters or attempts to enter the territory of India or is found therein with arms, ammunition or explosives, or

(b) where such foreigner enters or attempts to enter a notified area or is found therein in contravention of section 3 of the Criminal Law Amendment Act, 1961, or 23 of 1961.

(c) where such foreigner enters or attempts to enter the local limits or is found within the local limits of such area adjoining the borders of India as may be specified in an order made under section 139 of the Border Security Force Act, 1968, without a valid travel document, or 47 of 1968.

(d) where the Central Government has reason to believe that such foreigner commits or is likely to commit any offence under the Official Secrets Act, 1923. 19 of 1923.

(2) In the case of any foreigner to whom sub-section (*1*) applies, sections 10 to 13 shall have effect subject to the following modifications, namely :—

(*a*) in section 10, for the words "shall, within thirty days", the words "may, at any time prior to but in no case later than three months before the expiration of two years" shall be substituted;

(*b*) in section 11,—

(*i*) in sub-section (*1*), for the words "from the date of detention", the words "from the date on which reference is made to it" shall be substituted;

(*ii*) in sub-section (*2*), for the words "the detention of the person concerned", the words "the continued detention of the person concerned" shall be substituted;

(*c*) in section 12, for the words "for the detention" in both the places where they occur, the words "for the continued detention" shall be substituted;

(*d*) in section 13, for the words "twelve months", the words "three years" shall be substituted.

Ord. 5 of 1971.

18. (*1*) The Maintenance of Internal Security Ordinance, 1971, is hereby repealed. Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act as if this Act had come into force on the 7th day of May, 1971.

## STATEMENT OF OBJECTS AND REASONS

In view of the prevailing situation in the country and the developments across the border, there is need for urgent and effective preventive action in the interest of national security. It is, therefore, considered essential to have powers of preventive detention to deal effectively with threats to the defence of India and to the security of India, specially from external sources and espionage activities of Foreign agents. Since the existing laws available to deal with the situation have not been found to be adequate, the Maintenance of Internal Security Ordinance, 1971, has been promulgated. It is now proposed to replace the Ordinance by an Act.

NEW DELHI;
*The 24th May*, 1971.

K. C. PANT.

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## PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F. 55/3/71-Poll. I(B), dated the 27 May, 1971 from Shri K. C. Pant, Minister of State in the Ministry of Home Affairs (Grih Mantralaya men Rajya Mantri) to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the proposed Bill recommends to the Lok Sabha under article 117(3) of the Constitution of India the consideration of the Maintenance of Internal Security Bill, 1971.

## FINANCIAL MEMORANDUM

Under clause 9 of the Bill, the Central Government and the State Governments are required to appoint Advisory Boards. There is no provision in the Bill regarding the payment of any salary, allowances, etc., to the Members of the Advisory Boards. The Central Government may, however, have to incur some expenditure in connection with the functioning of the Advisory Boards. It is not possible to make an accurate estimate of the expenditure which may be involved, but ordinarily the estimate of the expenditure which may be involved, but ordinarily the recurring expenditure.

S. L. SHAKDHER,
*Secretary.*

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